

ONTARIO HUMAN RIGHTS COMMISSION

In the matter of the amended complaint
made by Julia Adair, dated February
27, 1991 alleging discrimination in
employment on the basis of sex,
harassment and reprisal by K.B. Home
Insulation Ltd., Bert Olthof and Joe
Ruffolo.

B E F O R E :

PROFESSOR BERNARD ADELL

Chairman

HELD AT:

Donald Gordon Centre,
421 Union Street,
Kingston, Ontario.

DATE:

July 18, 1991

APPEARANCES:

Geraldine R. Sanson
Wendy Waxman

Counsel for the Commission

Mary F. O'Connor Kaiser

Counsel for Julia Adair

Alexandra M. Chyczij

Counsel for K.B. Home
Insulation Ltd., Bert Olthof
and Joe Ruffolo

1 other authorities, speak of the need for expedition in
administrative adjudication.

5 It may be true that in the earliest stages
of this proceeding matters moved slowly, the proceedings
took a long time, but a delay in the earlier stages of
the proceedings can't be used, in my view, as an argument
for more delay at this point.

10 There is an expectation, as the
authorities make clear, that the Board of Inquiry will
proceed expeditiously. It's clear that the Human Rights
Code, by the time limits it has set, expects a Board of
15 Inquiry to proceed expeditiously. So I am hereby
rejecting the application for a stay or an adjournment,
whatever it may be called.

20 Secondly, we have an application which I
take it is in two parts, an application for greater
particulars of the allegations against the respondents,
including the full statements made to officers of the
Human Rights Commission by witnesses at the investigative
25 stage, and also including the names of prospective
witnesses. The second part of this application is an
application for an adjournment in order to enable the
respondents to make use of the material so supplied in
30 the preparation of their case.

First, the application for greater

--- Upon resuming at 3:25 p.m.

5 THE CHAIRMAN: There are two matters with respect to which I have been asked to make a ruling. The first is an application for a stay or an adjournment of these proceedings pending an application for judicial review.

10 Yesterday the respondents' counsel advised the Board and the other counsel that the respondents intended to apply for judicial review on the grounds of delay and breaches of natural justice in the pre-Board of Inquiry procedures, and today the respondents' counsel
15 advised that the judicial review application would likely be heard in late August.

20 Even if a judicial review application had already been made, section 25(2) of the Statutory Powers Procedure Act clearly envisages that there is to be no automatic stay of proceedings on a judicial review application.

25 It seems clear that the Board of Inquiry has the discretion to grant a stay where it deems that fairness and the balance of convenience requires a stay. Both the decision of the Ontario Court of Appeal in the Cedervale case, and the decision of the Board of Inquiry
30 in the Toman case, which were cited by counsel, among

1 particulars. The Board of Inquiry has specific powers
set out by section 12(1) of the Statutory Powers
5 Procedure Act to require certain matters to be introduced
in evidence at a hearing. Section 12(1):

" A tribunal may require ... a party,
by summons,

10 (a) to give evidence on oath or
affirmation at a hearing; and

(b) to produce in evidence at a
hearing documents and things
specified by the tribunal."

15 These powers are limited to production at a hearing.

There are numerous decisions of Boards of
Inquiry holding that section 12(1) does not authorize a
discovery proceeding, that it doesn't extend to,
20 requiring the production of documents prior to a hearing
or between the various parts of a hearing for the
purposes of discovery.

Now, with respect to the production of
25 materials other than at a hearing, my powers, I think,
are limited to the powers set out in or indicated by
section 8 of the Statutory Powers Procedure Act:

30 "Where the good character, propriety
of conduct or competence of a party
is in issue in any proceedings, the

1 material I would hold to be privileged for the reasons
set out in the decision of the Board of Inquiry in
Salamon v. Searchers Paralegal Services.

5 Even if it were not privileged the
application for its production in my view is an attempt
to require discovery, which goes beyond the limits of
what I can order under section 8 of the Statutory Powers
10 Procedure Act.

I realize that there are a lot of problems
resulting from the lack of some equivalent to a discovery
procedure under the Human Rights Code, and in fact in a
study I recently prepared for the Ontario Law Reform
Commission on Workplace Rights Adjudication in Ontario I
dealt to some extent with this problem.

It's not a simple problem. For example,
20 the Alberta Labour Relations Board quite recently dealt
with the argument that a discovery procedure should be
created by that Board for much the same purpose which
was argued for in this case. Chairman Sims of the
25 Alberta Labour Relations Board reviews the advantages and
disadvantages of a formal discovery proceeding. He
concludes that it would be most unfortunate for an
administrative tribunal to get embroiled in the very
lengthy, complex, technical proceedings often involved in
30 a discovery. I add that as an aside with respect to the



1 conflicting policy considerations in this case.

There are arguments for and against a
formal discovery process, but whatever the weight of
5 those arguments on either side, I think the authorities
are quite clear that I don't have the power to order what
is in effect a discovery procedure in this case.

This gets to the second part of this
10 request, the request for an adjournment to enable the
respondents and their counsel to in effect digest the
material that I've ordered the Commission to provide.

Given the restricted nature of what I have
15 directed the Commission to provide, given the already
extensive familiarity of the respondents with the
general thrust of the complainant's allegations, and
given the fact that there is approximately a month until
20 the next dates that we have scheduled for the resumption
of this hearing, I would refuse this request for an
adjournment. I think there will be ample time for the
respondents' counsel in the approximately three weeks
25 between the provision of the material that I have
directed the Commission to provide and the resumption of
the hearing to digest the material in question and to
prepare for the resumed hearing.

30 Those are my rulings.

MS. CHYCZIJ: Chairman Adell, could I ask



...S AGREEMENT ENTERED INTO THIS 16th

DAY OF August, 1991.

B E T W E E N :

JULIA ADAIR

(Hereinafter referred to as the "Complainant")

- and -

BERT OLTHOF

(Hereinafter referred to as "Olthof")

- and -

JOE RUFFOLO

(Hereinafter referred to as "Ruffolo")

- and -

K.B. HOME INSULATION

(Hereinafter referred to as the "Company")

- and -

THE ONTARIO HUMAN RIGHTS COMMISSION

(Hereinafter referred to as the "Commission")

WHEREAS the Complainant has filed with the Commission complaint No. 40-432E dated February 27, 1991 alleging sexual harassment and discrimination in employment by Olthof and Ruffolo, and reprisal by Olthof, and;

WHEREAS the Minister of Citizenship has appointed a Board of Inquiry in respect of this complaint; and

WHEREAS the parties wish to resolve this matter without a hearing;

NOW THEREFORE, this matter is settled as follows:

1. The Company and Olthof and Ruffolo agree to pay to the

complainant the sum of \$20,000.00 allocated in the following manner:

Loss of income: 30 weeks X \$280.00=	\$8,400.00
General Damages:	\$9,920.00
Interest on loss of income: (5% per annum X 4 years)	\$1,680.00
	<u>\$20,000.00</u>

Said payment is to be made by certified cheque within two (2) weeks of this agreement being incorporated into an order of the Board of Inquiry, as contemplated by paragraph 13 below.

2. It is understood and agreed that Olthof, Ruffolo and the Company, by entering into this agreement, do not admit any violations of any provisions of the Ontario Human Rights Code. It is further understood and agreed that the Complainant does not retract any of her allegations.

3. The Company agrees to provide the Complainant with a letter of reference in the form attached hereto as Appendix "A". If contacted by a prospective employer of the Complainant, the Company and Olthof and Ruffolo agree to make no comment inconsistent with the letter of reference.

The Complainant agrees to provide to the Company and Olthof and Ruffolo a release in the form attached hereto as Appendix "E".

The Company agrees to report to the Commission the names, addresses and phone numbers of all female employees departing from the Company for a period of three years from the date of the order referred to in paragraph 13 below. The information is to be sent to the Commission at 80 Queen St., Suite # 202, Kingston, Ontario, K7K 6WK to the attention of Tanis Crowe, Human Rights Officer, by prepaid first class mail within two weeks of each departure.

6. The Company and Olthof and Ruffolo agree to provide the Commission with a letter of assurance regarding their commitment to the principles embodied in the Ontario Human Rights Code and an undertaking to comply with its provisions, in the form attached hereto as Appendix "C".
- The Company and Olthof and Ruffolo also agree to post in a prominent place in the Company's premises a Code card and make available to its employees for reference purposes, a book of information supplied by the Commission within two weeks of this agreement being incorporated into an order of the Board of Inquiry.

7.

The Company agrees to adopt a policy on workplace harassment in the form attached hereto as Appendix "D", and to provide this policy to all existing and future employees. In addition, a copy of the policy shall be posted at all workstations occupied by female employees within two weeks of the agreement being incorporated into an order of the Board of Inquiry.

8.

The Company and Olthof and Ruffolo agree to provide a seminar on sexual harassment on the Company's premises to be attended by Olthof, Ruffolo, and all employees of the Company which shall be conducted by a professional, whose expertise is in the area of sexual harassment. Said seminar is to constitute ten hours in duration and take place before February 1, 1992. Said seminar shall not exceed \$2,000.00 in cost. Details of the seminar shall be provided to the Commission by December 16, 1991, care of Geri Sanson, Counsel, Legal Services, Ontario Human Rights Commission, 400 University Ave., 12th Floor, Toronto, M7A 2R9. Details shall include: the name and resume of the professional retained, a copy of the service agreement which provides that the professional retained agrees to report back to the Commission (care of Geri Sanson) on the attendance and success of the seminar within one month of the completion of the seminar.

9. Ruffolo agrees that when he is in the office, at least one other employee is present in the office when any female employee is working.

11. At the end of the three year period referred to in paragraph four of the Settlement Agreement, the Commission is hereby authorized to review the employment records of the Company to ensure that all female employees who have left their employment during said period have been reported to the Commission.

12. The Company agrees to permit the Commission to conduct spot audits of the premises to ensure compliance of paragraphs seven and nine.

13. This agreement is subject to approval by the Board of Inquiry and the issuance of an order incorporating the terms of this agreement. In the event that the Board of Inquiry does not give its approval or make such an order, this agreement is null and void.

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES.

<u>PARTIES</u>	<u>WITNESS</u>	
<u>DATE</u>	<u>DATE</u>	
JULIA ADAIR <i>Julia Adair</i>	<i>Margaret</i>	16/2/91
BERT OLTHOF	<i>[Signature]</i>	16/2/91
JOE RUFTOLO <i>[Signature]</i>	<i>[Signature]</i>	16/2/91
K.B. HOME INSULATION LTD. Per <i>[Signature]</i>	<i>[Signature]</i>	16/2/91
ONTARIO HUMAN RIGHTS COMMISSION Per <i>Catherine Frazee</i>	<i>J. M. Colm</i>	91-09-09

K.B. HOME INSULATION EMPLOYMENT POLICY ON SEXUAL
HARASSMENT

K.B. Home Insulation is a company that is made up of a number of male employers, male employees and few female employees. Because of the makeup of its workforce, K.B. Home Insulation strictly adheres to the following policy on sex discrimination and sexual harassment in the workplace:

What is Sexual Harassment?

Sexual harassment is a form of discrimination based on sex. It results in a person who is disadvantaged in the workplace because of differential treatment in the sexual dignity of that person. It consists of acts that are unwarranted, unsolicited and unwelcomed. It can be overt or subtle. Even if the nature of the harassment is not physical, it can still be considered to be sexual harassment if it creates a poisoned environment and even if there is no economic consequence such as loss of one's job or loss of seniority.

Harassment is defined in s. 9(1)(f) of the *Ontario Human Rights Code* to mean "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".

The reference to comment or conduct "that is known or ought reasonably to be known to be unwelcome" imports an objective element into the definition of harassment. This factor acknowledges that in some situations, it should be anticipated that the conduct or

comments motivated by the person's sexual identity, ie. because she is a woman, would be offensive or unwelcome and there is no requirement that the behaviour be objected to before a violation of the *Code* is found.

This element of the definition in the *Code* also recognizes that in many instances, it would be unreasonable to require a woman, who may be in a vulnerable position, to object to the offensive treatment before being able to claim a right to be free from such treatment.

When considering whether your conduct as an employee is offensive or unwelcome to a woman, the standard is "what would a reasonable woman think?", not whether the conduct would be considered unwelcome by a man.

Whatever a woman employee's personal moral standards might be in terms of her sexual relationships, an employer or any other employee is not entitled to sexually harass her. Her personal behaviour is her own business. Whatever her personal behaviour outside the workplace might be, it does not excuse an employer or an employee in his sexual harassment of her.

What Kinds of Conduct Constitute Sexual Harassment?

Conduct which can constitute sexual harassment includes:

- (1) verbal abuse or threats;
- (2) unwelcomed remarks, jokes, innuendos or taunting;
- (3) displaying of pornographic or other offensive or derogatory pictures;
- (4) practical jokes which cause awkwardness or embarrassment;
- (5) unwelcomed invitations or requests, whether indirect or explicit, or intimidation;
- (6) leering, being visually undressed and stared at, or other gestures;
- (7) unnecessary physical contact such as touching, patting, pinching, punching, or;
- (8) physical assault.

Commitment to the Ontario Human Rights Code

The Company wishes to confirm its policy of adhering to and expecting employees to adhere to the provisions of the *Code*. We feel that it is important that everyone know the rights and obligations imposed upon all of us by the *Code*. Some of the most important provisions of the *Code* are as follows:

Section 4(1)

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.

The Company confirms its commitment to ensuring that the Company, its management and its employees comply with the provision of Section 4.

We wish to call to the attention of all employees the provisions of Section 4(2) of the *Code* which provides that:

Section 4(2)

Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.

The Company confirms that it and its management will abide by the provisions of Section 4(2). It also wishes to advise all employees that they are required to abide by the provisions of Section 4(2). Any employee who engages in any conduct contrary to Section 4(2) will be subject to disciplinary action which may include termination of employment.

We also wish to bring to the attention of the employees the provisions of Section 6(2) and 6(3) of the *Code* dealing with sexual harassment. The *Code* provides as follows:

6(2)

Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his employer or her employer or agent of the employer or by another employee.

6(3)

Every person has a right to be free from:

RELEASE

IN CONSIDERATION of the payment of the sum of \$20,000.00 the receipt of which is hereby acknowledged, I, JULIA ADAIR on behalf of myself, my heirs, executors, administrators, successors and assigns, hereby release and forever discharge K.B. HOME INSULATION LTD., its employees, officers and agents, including its successors and assigns, from all present or future complaints or causes for complaint, under the Human Rights Code, grievances actions, causes of action, claims, and demands of every kind existing up to the date hereof, arising out of or in any way relating to the matters giving rise to my complaint # 40-432E dated February 27th. 1991, and including an action in the Ontario Court General Division, Action No. 3638/90 between Julia Adair, as Plaintiff, and K.B. Home Insulation Ltd., Bert Olthof and Joe Ruffolo, as Defendants.

Nothing in this Release shall be considered or deemed to be an admission of liability or a violation of any provisions of the Ontario Human Rights Code by Bert Olthof, Joe Ruffolo and K.B. Home Insulation Ltd. nor shall it be considered or deemed to be a retraction of the allegations by Julia Adair.

I DECLARE that the terms of this Release are fully understood by me and that the above mentioned payment is the sole consideration for this Release.

DATED at KINGSTON this _____ day of _____ 19____.

SIGNED AND SEALED
in the presence of:

WITNESS

COMPLAINANT

August 17, 1991

Ontario Human Rights Commission
Legal Services
400 University
12th Floor
Toronto, Ontario
M7A 2R9

To the Commission:

Re: Julia Adair v. K.B. Home Insulation, Bert Olthof and Joe Ruffolo
Complaint No. 40-432E

With reference to the above-noted complaint, both personally and on behalf of K.B. Home Insulation Ltd., we hereby assure the Commission of our commitment to the principles embodied in the *Ontario Human Rights Code* and undertake to comply with its provisions.

Yours very truly,

Bert Olthof

President

Joe Ruffolo

Sales Representative and Part Owner

Appendix "A"

TO WHOM IT MAY CONCERN:

This letter shall confirm that Julia Adair was employed by K.B. Home Insulation Ltd. from February 2, 1987 through to August 17, 1987.

From the commencement date of her employment, Mrs. Adair took her position very seriously. She learned the management of the bookkeeping functions quickly and competently. She was able to ~~tackle and overcome~~ an existing backlog ~~in the office~~ *must the challenge of* *while performing her regular*

At all times, Mrs. Adair spoke, acted and appeared appropriate for the environment.

a professional manner at all times.

She went beyond the performance of the ~~duties~~ *responsibilities* of her position in that she created schedules for the enhancement of the operation procedures.

She compiled a secretaries manual including a complete job description. She took over some of the sales functions in the absence of regular sales staff.

Overall, Mrs. Adair's skills were above average and were performed with accuracy and efficiency.

I would not hesitate to recommend her for any position.

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or is threatened by a person in a position to confer, grant or deny a benefit or advancement of the person.

We confirm our commitment to ensuring that the provisions of Section 6(2) and Section 6(3) of the *Ontario Human Rights Code* are complied with. Any employee who engages in conduct contrary to this provision will be subject to disciplinary action which may include termination of employment.

Each individual employee is responsible for maintaining acceptable standards of personal behaviour in the business environment and for helping to ensure that all employees can carry out their assigned duties in an atmosphere that is free from discrimination and sexual harassment.

Any person who believes that they have been sexually harassed, may contact:

Ontario Human Rights Commission
80 Queen Street
Suite #202
Kingston, Ontario
K7K 6W7

(613) 548-6750